

ANNEX I

**Plaintiff's Response to Defendants' Opposition to
Trailblazer Studios' Request to Record Trial Proceedings**



1 Joseph D. Satterley (C.S.B. #286890)
Denyse F. Clancy (C.S.B. #255276)
2 Ian A. Rivamonte (C.S.B. #232663)
irivamonte@kazanlaw.com
3 KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation
4 Jack London Market
55 Harrison Street, Suite 400
5 Oakland, California 94607
Telephone: (510) 302-1000
6 Facsimile: (510) 835-4913
7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ANTHONY HERNANDEZ VALADEZ,

11 Plaintiff,

12 v.

13 JOHNSON & JOHNSON, et al.,

14 Defendants.

Case No. 22CV012759

PREFERENCE MOTION GRANTED

Assigned for All Pre-Trial Purposes to
Judge Richard Seabolt
Department 18

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' OPPOSITION TO
TRAILBLAZER STUDIOS' REQUEST
TO RECORD TRIAL PROCEEDINGS**

Case Filed: June 15, 2022

Trial Date: April 17, 2023

Kazan, McClain, Satterley & Greenwood

A Professional Law Corporation

Jack London Market • 55 Harrison Street, Suite 400 • Oakland, California 94607
(510) 302-1000 • Fax: (510) 835-4913 • www.kazanlaw.com

1 This Court has the discretion to permit, refuse, or limit Trailblazer Studios’ access to
2 record this case’s trial proceedings. [Cal. Rules of Ct., rule 1.150(e); *People v. Dixon* (2007) 148
3 Cal.App.4th 414, 437.] In exercising that discretion, this Court should disregard Defendants’
4 argument that Trailblazer Studios’ request is “improper” under Civil Code section 3344(a) because
5 it purportedly “would violate California law prohibiting profit from the use and likeness of an
6 individual absent their consent.” [Defendants’ Opp. at 8.] Defendants are wrong because
7 subdivision (d) of section 3344 states that matters of “**public affairs**,” including this case “**shall**
8 **not constitute a use for which consent is required under subdivision (a).**” [Civ. Code § 3344(d)
9 (emphasis added).]

10 In California, a plaintiff may allege misappropriation of their name or likeness under Civil
11 Code section 3344(a). However, “no cause of action will lie” under a section 3344 claim for
12 misappropriation “for the ‘[p]ublication of matters in the public interest, which rests on the right
13 of the public to know and the freedom of the press to tell it.’” [*Montana v. San Jose Mercury*
14 *News, Inc.* (1995) 34 Cal.App.4th 790, 793; *see also Elliott v. Lions Gate Entertainment Corp.*
15 (C.D. Cal., Nov. 8, 2022, No. 221CV08206SSSDFMX) 2022 WL 17408662, at *9 (citing to
16 *Montana*, 34 Cal.App.4th at 793).] Indeed, section 3344(d) states that “[f]or purposes of” section
17 3344, “a use of a name, voice, signature, photograph, or likeness in connection with any news,
18 **public affairs**, or sports broadcast or account, or any political campaign, **shall not constitute a use**
19 **for which consent is required under subdivision (a).**” [Civ. Code § 3344(d) (emphasis added).]

20 For example, in *Elliott*, the plaintiff claimed that the at-issue documentary “suggests that he
21 was a ‘recruiter and member of a purported sex cult.’” [*Elliott*, 2022 WL 17408662, at *7.]
22 Applying section 3344 and California authorities interpreting it, the federal district court held that
23 the plaintiff had no valid claim for improper use of his name and likeness because the at-issue
24 documentary involved “a matter of public interest.” [*Id.* at *9.] “And as California’s courts have
25 held, even private individuals cannot state a claim for misappropriation for their portrayal in a
26 publication concerning a public matter.” [*Id.* (citing *Dora v. Frontline Video, Inc.* (1993) 15
27 Cal.App.4th 536, 543).]

28 Defendants’ bad-faith bankruptcy and infliction of further harm upon mesothelioma

1 victims like Plaintiff Anthony Hernandez Valadez is a “matter of public interest.” [See, e.g.,
2 Spector, M., *Judge Indicates Intention to Dismiss J&J Talc Unit Bankruptcy* (Feb. 14, 2023)
3 Reuters <<https://tinyurl.com/2tum2v4y>> (as of Mar. 23, 2023).] Indeed, Mr. Valadez’s case is the
4 only one allowed to proceed to trial despite the bankruptcy stay affecting thousands of other talc
5 claimants. [Church, S., *J&J Must Face Baby Powder Suit From 24-Year-Old With Cancer* (Feb.
6 14, 2023) Bloomberg Law <<https://tinyurl.com/4jwva59n>> (as of Mar. 23, 2023).] Thus,
7 Defendants’ claim that “Court approval” of Trailblazer Studios’ “request creates a myriad of legal
8 concerns and potential liabilities” is unfounded. Their argument also contradicts Rule 1.150 and
9 Code of Civil Procedure section 124 because, under Defendants’ mistaken interpretation of
10 California law, it creates a presumption against recording or broadcasting court proceedings. [Cal.
11 Rules of Ct., rule 1.150(a) (“This rule does not create a presumption for or against granting
12 permission to photograph, record, or broadcast court proceedings.”); see also Code Civ. Proc.
13 § 124 (generally, “the sittings of every court shall be public”).]

14 Defendants’ arguments that Civil Code section 3344 “should cause the court additional
15 concern” are unfounded and inconsistent with the law. Accordingly, Plaintiff requests that this
16 Court disregard Defendants’ section 3344 arguments in exercising its discretion to permit, refuse,
17 or limit Trailblazer Studios’ access to record the trial proceedings in this case.

18
19 DATED: March 23, 2023

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

20
21
22 By: 

Ian A. Rivamonte

23 Attorneys for Plaintiff
24
25
26
27
28

PROOF OF SERVICE

Anthony Hernandez Valadez v. Johnson & Johnson, et al.
Alameda County Superior Court Case No. 22CV012759

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is Jack London Market, 55 Harrison Street, Suite 400, Oakland, CA 94607.

On March 23, 2023, I served true copies of the following document(s) described as:

**PLAINTIFF'S RESPONSE TO DEFENDANTS' OPPOSITION TO
TRAILBLAZER STUDIOS' REQUEST TO RECORD TRIAL PROCEEDINGS**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically served the document(s) by using the File & ServeXpress system. Participants in the case who are registered users will be served by the File & ServeXpress system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2023, at Tracy, California.



E. A. Pawek

SERVICE LIST

BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles CA 90067
Telephone: (310)284-3880
Facsimile: (310)284-3894
FOR: ALBERTSONS COMPANIES, INC.,
ALBERTSONS COMPANIES, INC.sii/pae/et
LUCKY STORES, INC., LUCKY STORES,
INC., SAFEWAY INC., SAVE MART
SUPERMARKETS , SAVE MART
SUPERMARKETS sii/pae/et LUCKY
STORES, INC., TARGET CORPORATION,
WALMART INC.

KING & SPALDING LLP
633 West 5th Street,
Suite 1600
Los Angeles CA 90071
Telephone: 213-443-4351
Facsimile: 213-443-4310
FOR: JOHNSON & JOHNSON , LTL
MANAGEMENT LLC, LTL MANAGEMENT
LLC sii/pae/et JOHNSON & JOHNSON
BABY PRODUCTS COMPANY, LTL
MANAGEMENT LLC sii/pae/et JOHNSON &
JOHNSON CONSUMER INC.

SPANOS PRZETAK
555 12th Street
Suite 2060
Oakland CA 94607
Telephone: (510) 250-0200
Facsimile: (510) 380-6354
FOR: DESIGNATED DEFENSE COUNSEL